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IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1893.

THE PENNSYLVANIA RAILROAD COMPANY AND OTHERS, PLAINTIFFS IN ERROR,
*vs.*
THOMAS W. JONES.
(No. 260.)

THE SAME PLAINTIFFS IN ERROR
*vs.*
CHARLES T. STEWART.
(No. 261.)

## Writs of Error to the Supreme Court of the District of Columbia.

## Brief in Behalf of Defendants in Error.

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These cases were, by consent, consolidated for the purposes of trial, and tried together before the same jury, which rendered a separate verdict in each case. The causes of action were personal injuries to the plaintiffs, caused by a collision of railroad trains. Five com-

panies were sued jointly in each case, to wit: The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Washington Railroad Company, the Alexandria and Fredericksburg Railway Company, and the Virginia Midland Railway Company. The verdicts in each case were in favor of the plaintiffs, respectively, against the four companies first named, and in favor of the Virginia Midland Company. The verdict in the first case was for $10,000, and in the second for $15,000.

Upon motions for a new trial upon bills of exceptions, the General Term of the court below affirmed the judgments entered on the verdicts at special term, and the defendants below bring the cases here on writs of error.

A brief outline of the cases is that the plaintiffs were seriously injured and crippled for life, in a collision between a passenger train upon which, as postal clerks in charge of the United States mail, they were riding, and a freight train, which occurred about 10 o'clock, p. m., of the 19th day of February, 1885, at a point known as the "arch" or "gauntlet," on the line of the Alexandria and Washington road, between the cities of Alexandria and Washington, about four miles south of Long Bridge.

The "arch" was where the railroad and canal crossed each other nearly at right-angles, the former running under the bed of the latter. There were double tracks between Alexandria and Washington, except through this arch, and for a short distance on each side of it, where it is substantially and practically a single track; that is, the tracks interlace, and while one is distinct from the other, both are laid on the same ties through the arch, so that the corresponding rails of each track are about nine inches from each other, rendering it impossible for trains to pass each other at this point.

The passenger train was coming north and the freight was going south. The collision occurred about fifty feet north of the north face of the arch, killing four persons and seriously injuring the plaintiffs and others.

The passenger train on which plaintiffs were, belonged to the Virginia Midland Company, and came over its road from the South, the northern terminus of which is at Alexandria, and was running from the last-named point to Washington over the tracks of the Alexandria and Washington, and the Baltimore and Potomac, under an arrangement made by the Virginia Midland Company with the Pennsylvania Railroad Company, which controlled those roads at the time, and operated them in connection with the Alexandria and Fredericksburg, and through the corporate organizations of the three companies as one line from Baltimore to Quantico. By this arrangement the Virginia Midland Company paid agreed prices per passenger, and per ton of freight, for the privilege of running its trains from Alexandria to Washington over the Alexandria and Washington, and Baltimore and Potomac; and the Virginia Midland Company was required to, and did, at Alexandria, surrender its train to the agent or employee of the associated companies controlling the roads north of that point, and they were run under the sole direction of this person, who was called, in the practical operations, a pilot. The employees of the Virginia Midland remained upon the train and performed the duties of running it, but acted under the sole directions of this pilot, who alone had the right to start, stop, or otherwise control the movements of the train. The pilot on this passenger train, at the time of the collision, was one Bennett, who wore a uniform, such as is worn by the employees of the Pennsylvania Railroad Company, except that the buttons bore the letters B. & P. He was

borne on the pay-rolls of the Alexandria and Fredericksburg.

The freight train in question was made up at Baltimore to run to Quantico. It was hauled by an engine belonging to the A. & F., and had those letters on it. The cars belonged to the A. & F., B. & P., and other companies. The engineer and fireman in charge of the freight engine were borne upon the pay-rolls of the Baltimore and Potomac, and the conductor and brakemen on those of the Alexandria and Fredericksburg. The gross earnings of the A. & W., A. & F.., and B. & P., together with what the Virginia Midland paid for the privilege of running its trains over the tracks of the A. & W. and B. & P., went into the hands of Mr. Leib, the common treasurer of the A. & W., A. & F. and B. & P. Companies, and after paying operating expenses, the residue was divided amongst the three companies, according to some rule or proportion not definitely shown, but the tendency of the evidence was that it was prorated on the trackage basis, making due allowance to the B. & P. for Long Bridge and the depot in Washington. The Pennsylvania Railroad Company recognized its responsibility for the freight train by paying the owners thereof for the freight destroyed in the collision, much of which was shipped from Baltimore. Between pages 142 and 143 of the record is a map showing the route and termini of the B. & P., A. & W. and A. & F. That the Pennsylvania Railroad Company was actually operating the roads of the other plaintiff's in error, at the time of the collision is conclusively shown by the evidence.

Both these trains were a little late at the place of collision, but the freight more so than the passenger. According to the rules printed and published to govern

trainmen in running their trains the passenger train had the preference or right of way over the freight, at the arch.

Automatic electric signals had been placed on either side of this arch, so arranged that when a train approached on either side to a given point, it would cause the signal on the opposite side to show a red light to a train approaching from that direction, and the rule required an engineer coming up to a red light to stop there for the other train to pass through. These signals were far enough from the arch to prevent collisions if the signals worked properly and engineers observed the rule. The evidence was conflicting upon both questions; that is, whether the signals were in proper order and showed correctly, and whether the engineers of the two trains properly observed the signals and the rules applicable thereto.

The evidence given to the jury related to these two questions, and to the arrangement amongst the defendant companies by which the roads from Baltimore to Quantico were operated as one line by the plaintiffs in error jointly, and by which the Virginia Midland trains were permitted to run between Alexandria and Washington over this line. A statement of the tendency of a portion of the evidence upon these points is found in the printed record, pp. 98 to 103 both inclusive, to which reference is made for a more minute statement of the case.

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## Points Raised by Exceptions at the Trial.

The questions arise upon the rulings of the trial court in admitting evidence tending to show, as the defendants in error claim, that the plaintiffs in error jointly, oper-

ated a line of railway from Quantico, Virginia, to Washington and east of that point, as one line, the operations being carried on by and through the corporate organizations of the A. & F., the A. & W. and the B. & P. companies, under the control and general direction of the Pennsylvania Railroad Company; and that the Virginia Midland Railroad Company ran its trains over that portion of the line between Alexandria and Washington by an arrangement made between the two last-named corporations, which was of such a character that when the trains of Virginia Midland Company were running on the tracks of the associated companies, the plaintiffs in error, it became and was the train of the associated companies, and they were responsible for the running thereof; and the instructions of the court to the jury upon the evidence admitted, and the refusal of the court to instruct as prayed by counsel for plaintiffs in error upon the questions arising thereon; and its refusal to instruct in accordance with the prayers of said counsel upon the effect of the A. & W. Company being in the hands of a receiver, as claimed by them; and of the A. & F. Company being in the hands of trustees, as claimed by them, at the time of the accruing of the cause of action mentioned in the declarations. The said counsel also requested the court to instruct that no inference of negligence could arise from the use of the automatic electric signals which the court refused, and instructed contrary to the views of said counsel upon this point, to which exception was taken.

Printed rules for the running of trains on this line were in evidence, and said counsel asked the court to give certain instructions to the jury as to the effect and proper construction of the said rules, which the court did not do wholly as prayed, to which said counsel excepted.

The instructions of the court upon the evidence in relation to the freight train were also excepted to by counsel for plaintiffs in error.

The questions to be considered may appropriately be classified as follows:

**First. Exceptions in Relation to the Admissibility of Evidence.**

**Second. Exceptions as to the Giving and Refusing Instructions to the Jury. And these last may be subdivided as follows:**

*A. The joint liability of the plaintiffs in error.*

*B. Particularly as to the Pennsylvania Railroad Company.*

*C. The instructions of the court as to the freight train, and the connection of each of the defendants with it as shown by the evidence.*

*D. The arrangements between the plaintiffs in error and the Virginia Midland Railroad.*

*E. The interpretation of the rules as to running trains.*

*F. The automatic electric signals.*

*G. As to the receiver of the Alexandria and Washington Railroad.*

*H. As to the trustees of the Alexandria and Fredericksburg Railway.*

## Exceptions to Rulings upon Admissibility of Evidence.

There are twenty-six exceptions of this character.

The attention of the court is called in the outset to the fact that there is no reason or ground of objection to the admissibility of any of the evidence excepted to, set forth in any of the bills of exceptions.

The court and counsel are left to conjecture, as best they may, what ground or grounds the excepting party may rely upon at the argument in support of such exceptions. This is contrary to the rule of decision of this court, which it has adhered to for many years, and in recent cases has enforced with great uniformity.

The court declines to consider an exception to the admission of evidence where the bill of exceptions fails to set forth specified grounds and reasons of objections, and where any are set forth it confines itself to such as are specified.

Camden *vs.* Doremus, 3 How., 530.
U. S. *vs.* McMaster, 4 Wall., 680.
Burton *vs.* Driggs, 20 Wall., 125.
Wood *vs.* Weimer, 104 U. S., 786.
Noonan *vs.* Cal. Min. Co., 121 U. S., 393.
Woodbury *vs.* the District of Columbia 136 U. S., 450, 462.

If this rule be applied in these cases, as we insist it should be, it will take out of the record at once all of the twenty-six exceptions in relation to the exclusion and admission of evidence.

It may be added here that the defendant could not suffer by this course, because a very casual glance at the evidence excepted to shows that it was competent and pertinent to the issues tried before the jury, and was

produced before the court in a regular and proper manner. This will become more apparent as attention is called to the evidence mentioned in each separate exception.

(The numerals refer to the pages of the record in the Jones Case.)

### First Exception (page 39).

This was an exception to the evidence of the plaintiff, Jones, to the effect that the employees of the Baltimore and Potomac Railroad Company were in charge of the trains upon which the plaintiff and the mails were carried between Washington and Alexandria at and about the time of the accident.

When it is remembered that one of the questions to be determined by the jury was whether the Baltimore and Potomac was liable for the accident, it is difficult to see what objection could be alleged to that evidence.

### Second Exception (page 39).

This was taken to the judgment of the court permitting the plaintiff, Stewart, to testify that Bennett, the pilot, and Wilkins, the conductor, were in charge of the train upon which plaintiffs were at the time of the accident. That this was proper evidence is too plain to admit of comment.

### Third Exception (page 73).

This exception is to the admission of the testimony of Bruce, the engineer of the passenger train, who had been running in that capacity over the road for some years, that Sharpe, the trainmaster in the Baltimore

and Potomac depot at Washington, had charge of all the trainmen in the employ of the Baltimore and Potomac and Alexandria and Fredericksburg and the Alexandria and Washington. We must await the suggestion of defendant's counsel to learn what possible objection there can be to that evidence.

### Fourth Exception (page 73).

This exception was to the admission of the testimony of Bruce, to the effect that Sharpe told him on one occasion that the signals were out of order, and that on several others, when anything was wrong, he notified him in person or on a slip of paper, and when they were fixed notified him that they were all right. It had been shown that Sharpe was the train and road-master in charge, under Carter, the general superintendent, of all trains between Washington and Alexandria; and it is submitted that anything that he may have said in connection with the running of trains or about the automatic signals was competent evidence.

Evidence to the same effect was subsequently admitted without objection (p. 101).

### Fifth Exception (pages 73, 74).

This exception was to the reception of the evidence of Bruce to the effect that the pilot on the trains between Washington and Alexandria several times asked him why he lost time. No objection to this evidence is specified in the bill of exceptions and none seems to suggest itself.

SIXTH EXCEPTION (page 74).

This exception was taken to the judgment of the court in permitting Bruce to testify in relation to the method of going through the "gauntlet" before the erection of the signals, to the effect that passenger trains had the superior right over other trains, and that when freight trains arrived at that point and found a passenger train there they waited until the passenger train went through.

SEVENTH EXCEPTION (page 75).

This exception was to the evidence of Bruce that in running north-bound passenger trains between Alexandria and Washington he frequently passed trains on the north side of the arch.

The tendency of the evidence in these two last exceptions is to the effect that north-bound passenger trains had the priority or right of way at the arch, which is in harmony with the printed rules given in evidence without objection. The utmost that could be urged against this verbal evidence is that it is immaterial. The fact being established by other evidence, the admission of the verbal would not be harmful, even if erroneous. Attention is also called to the fact that the evidence mentioned in the last three exceptions was admitted at the instance of the Virginia Midland, and not at the request of the plaintiffs.

EIGHTH, NINTH, and TENTH EXCEPTIONS (pages 76 to 78 inclusive).

These three exceptions relate to the admission of substantially the same evidence, being the written authority executed by the A. & W. and the B. & P. roads, respect-

ively, authorizing John S. Leib, as the treasury of each of said roads, to receive from the United States Government, drafts or moneys becoming due either road for carrying the United States mail, and the drafts issued by the Government of the United States and delivered to Leib in payment for the carrying thereof by rail between Washington and Alexandria, which drafts represented the entire amount paid for the transportation of mails by rail between Alexandria and Washington, for the first quarter of the year 1885, which covers the date of the accident in question. Before these papers were offered in evidence, as shown by the bills of exceptions, plaintiffs proved the due execution of them by the railroad companies respectively, that they were filed in the Post Office Department of the United States, and that payment had been made to Leib in pursuance thereof down to the date of the accident and subsequent thereto; and also proved the execution of the drafts by the post-office officials and the endorsement of Leib thereon. This evidence certainly seems competent, material, and proper. The plaintiffs were postal clerks in charge of the very mail for which these payments were made. The tendency of the evidence is to show who was responsible for the transportation of the mails and the plaintiffs, and who actually performed that service.

ELEVENTH EXCEPTION (pages 78 and 79).

This exception was taken to the refusal of the court to permit counsel for defendants to prove by George C. Wilkins, on cross-examination, how it came about that J. R. Wood, the general passenger agent of the Pennsylvania Railroad Company, and Charles E. Pugh, the general manager of said company, held like-

wise, the same offices in the A. & F. and A. & W. companies. There was no error in this refusal on the part of the court. Said Wilkins was a witness hostile to the plaintiffs, being the receiver of the A. & W. at the time of the accident, and who had been in the employ of the Pennsylvania Company up to the time he became receiver, and before and since always connected with this system of roads. The defendants placed him on the stand for the sole purpose of proving that Wood and Pugh were respectively, at and about the time of the accident, general passenger agent and general manager, respectively, of the Pennsylvania Railroad Company, in order to lay the foundation for introducing the testimony which is the subject of the next bill of exceptions. The line of cross-examination attempted by the counsel for the defendants was wholly foreign to the direct examination. Besides, Wilkins was subsequently called by defendants and testified fully upon these matters, and plaintiffs also prove the same facts subsequently by other witnesses (p. 100).

TWELFTH EXCEPTION (pages 79, 80 and 81).

This exception was to the admission in evidence of the advertisement appearing in the *Evening Star* of the 19th of February, 1885, the date of the accident, in which the Pennsylvania Railroad Company advertised the running of trains over the A. & W. road in connection with others. The foundation was first laid by proof that Pugh and Wood, whose names appeared to said advertisement, were officers of the said Pennsylvania Railroad Company, and that that company authorized its insertion and paid the bill therefor. (In connection with the evidence in this regard, recited in the twelfth bill of exceptions, see the evidence on page 100.) It is sub-

mitted that this was proper and competent evidence as tending to show that the Pennsylvania Railroad Company was running trains over the A. & W. in connection with its main line, the A. & F., the B. & P., and the P., W. & B., and also tending to show the joint operation of these roads by the several companies.

THIRTEENTH EXCEPTION (page 81).

This exception was to the admission of evidence tending to show that the conductor and trainmen in charge of the pay-car, which came from the east and paid all the employees at Washington and south of that point, wore the uniform usually worn by the Pennsylvania Railroad Company's employees. This evidence also tended to show that the Pennsylvania Company was operating all these lines.

FOURTEENTH EXCEPTION (pages 81, 82 and 83).

This exception was to the introduction of evidence showing that the printing of time and train schedules and running rules between Washington and Alexandria were ordered by and delivered to some person in the Baltimore and Potomac station in Washington, and paid for by the trustees of the Alexandria and Fredericksburg Company. It is submitted that this evidence had a tendency to show a joint business between the Baltimore and Potomac and the Alexandria and Fredericksburg, and also that the receiver had nothing to do with the running of the A. & W., the time table being for that and other roads. The pertinency and propriety of that evidence becomes more apparent when considered in connection with the evidence immediately following in

the next bill of exceptions, to wit, the pay-rolls of the Alexandria and Fredericksburg and the Baltimore and Potomac companies for the months of January and February, 1885, in the last of which months the accident occurred, by which it appears that Bennett, the pilot in charge of the passenger train, was on the pay-roll of the of the Alexandria and Fredericksburg Company. (pp. 84 and 85.) And it should be remembered in connection with this that he wore a Baltimore and Potomac uniform, or a uniform like that worn by the employees of the Pennsylvania Railroad Company, except it had the letters B. & P. on the buttons; that Joseph K. Sharpe, who was the road and train-master between Washington and Quantico, was on the pay-roll of the Baltimore and Potomac Company (pp. 92 and 93); that Frere, the engineer of the freight train, and Maloney, the fireman thereof, were on the Baltimore and Potomac pay-roll (pp. 88 and 89), and were running an Alexandria and Fredericksburg engine at the time. Augur, who was conductor of the freight, and the brakeman thereof, were on the pay-roll of the A. & F. (pp. 86 and 95). It is also important to consider in connection with the foregoing bills of exceptions the evidence given by the plaintiffs as set forth on pages 98 to 103, both inclusive.

FIFTEENTH EXCEPTION (pages 83 to 103).

This bill of exceptions contains three separate exceptions, to wit: First, to the refusal of the court, at the close of the plaintiff's testimony, to direct a verdict in favor of the A. & F.; second to direct a verdict in favor of the A. & W.; and third, to direct a verdict in favor of the Pennsylvania Railroad Company.

These three exceptions have been abandoned by the defendants by their proceeding to give evidence to the jury in their behalf after the refusal of the court to grant the motions as specified. This has been so often decided that authorities need not be cited in its support.

SIXTEENTH EXCEPTION (page 139).

This exception was taken to the judgment of the court in refusing to permit Wilkins, a witness in behalf of defendants, to testify that, by the printed rules and instructions given in evidence, neither train had the right of way over the other at the "gauntlet." There is nothing in this exception. The court was clearly right in refusing to allow Wilkins to contradict, as his evidence would have done, the printed rules and regulations governing the running of trains, which were admitted in evidence without objection, and conceded to be the rules which applied to the trains in collision. They are found in the Record, pages 40 to 49, both inclusive. The explicit provisions are that the north-bound passenger train had the right of way over the freight train at the "gauntlet," the point of the collision. (See rule No. 1 on time table between pp. 40 and 41; also rules numbered 77, 78, 80, 87, 90 and 91, record, pp. 44 and 45.) This subject is further considered in one of the exceptions to the instructions given by the court to the jury in relation to this question.

SEVENTEENTH EXCEPTION (pages 139 and 140).

This exception was to the judgment of the court permitting plaintiff's counsel, on the cross-examination of the witness Wilkins, to prove by him the authenticity of the report of the directors of the Pennsylvania Railroad

Company to the stockholders thereof, of whom he was one, which report is the subject of the next bill of exceptions. If it was proper to prove the authenticity of that document in any way no reason is conceived why it should not be by this witness, who was a stockholder in that company, and had personal knowledge of whether it was what it purported to be, as he states.

EIGHTEENTH EXCEPTION (pages 140 to 143 inclusive).

This bill contains several exceptions. First, to the admission of the report, and subsequently to each item thereof, which was read to the jury. It will be seen that the tendency of this report, and the extracts read to the jury from it, were to show that the Pennsylvania Railroad Company substantially owned, controlled, and and operated the A. & F., the B. & P., and the P. W. & B., in connection with their main line; and that in doing this they had a continuous line from the north to Quantico, and ran their trains over the Alexandria and Washington road, where the accident occurred. Amongst other things this report shows that the Pennsylvania Railroad Company was the sole owner of the entire bonded debt of both the A. & F. and B. & P.; that it owned a large majority of the stock of the B. & P. and the P. W. & B. The report purports to relate "to the lines *controlled* by your (the Pa. R. R.) Company" (p. 140).

In the report is the expression, "The Baltimore and Potomac Railroad connects your lines with Washington and the South," and goes on to give a detailed statement of the operations on that road for the year. (P. 141.) It also shows that Du Barry and Green, the nominal trustees of the A. & F., were both vice-presidents and directors of the Pennsylvania Railroad Com-

pany, and that that road was being run for the benefit of the P. R. R. Co., (pp. 141–2–3).

NINETEENTH EXCEPTION (pages 143 and 144.)

This exception was to the judgment of the court in permitting the said Wilkins, on cross-examination, to state the meaning of the initials P. W. & B., B. & P., A. & F., and A. & W., found on the map in said report, on lines representing railway tracks running from Philadelphia to Quantico by the way of Washington and Alexandria, which lines were represented on the map to be lines of the Pennsylvania Railroad Company. The tendency of this evidence in connection with this matter was to show that by that report the Pennsylvania Railroad Company said to its stockholders that it owned or controlled the entire line from Philadelphia to Quantico, including the A. & W. road where the accident occurred.

(The map is found between pages 142 and 143.) It purports to show "the Pennsylvania Railroad Company's lines East of Pittsburgh and Erie," and the B. & P., A. & W., and A. & F. are amongst them.

TWENTIETH EXCEPTION (pages 144 and 145).

This exception is to the admission in evidence, in connection with testimony of said Wilkins, of a railroad ticket sold by the Pennsylvania Railroad Company in Baltimore, in 1881, for a ride to Quantico over the B. & P., A. & F., and A. & W. In connection with this exception it is important to consider the evidence of Mr. John S. Barbour, found in the record, pages 49 to 55, inclusive.

He states that he was president and receiver of the Virginia Midland for many years, and continued in that relation to the first of January, 1885, a few weeks prior to the occurrence of this accident. That about the year 1875 he personally made arrangements by which the trains of the Virginia Midland were to run from Alexandria to the 6th Street Station of the B. & P. R. R. in Washington; that this arrangement was made between him and the chief officers of the Pennsylvania Railroad Company, and that he went to Philadelphia to make the arrangement with them; that they then claimed to control the A. & F., A. & W. and B. & P.; that this arrangement continued in force from the time he made it up to and including the time he left the Midland Company, and their trains were actually running over the A. & W. and B. & P., in pursuance of that arrangement, January 1, 1885, when he left. In the same connection it is also important to consider the evidence of George S. Wilkins, defendant's witness, upon cross-examination. His evidence was that he was an experienced railroad man, and in his examination in chief he was questioned by defendant's counsel, and testified in relation to the custom of railroad companies in issuing tickets over railroads not owned or controlled by them. Upon cross-examination by plaintiff's counsel upon that subject (page 144 and 182), Wilkins testified that he knew of no custom by which any railroad company ever did or would sell a ticket for passage from one point to another, where no part of the journey was over a road owned or controlled by the company selling the ticket. If this be so, then the ticket referred to in this bill of exceptions is conclusive evidence that the Pennsylvania Railroad Company owned or controlled some part of the line between Baltimore and Quantico, to wit, either the B. & P., the A. & W., or the A. & F., or all of them.

If it owned or controlled either, then it was a joint operator with the others.

### Twenty-first and Twenty-second Exceptions (pages 145 to 150, inclusive).

The exceptions contained in these two bills relate to evidence of the said Wilkins, together with the papers therein referred to, showing that the general freight agent of the Pennsylvania Railroad Company paid for the freight destroyed on the freight train in collision, and made demand upon Wilkins, as receiver of the A. & W. road, to be reimbursed for such payments. This evidence, it is submitted, was important, material and proper. Its tendency was to show by its own admission by its proper officer, to wit, the general freight agent, that the Pennsylvania Railroad Company was responsible for the freight train in collision, and that that train was its train. In connection with this exception it is important to refer to the fact that this freight train was made up in Baltimore to run to Quantico. If the Pennsylvania Railroad Company had not owned or controlled that train, but it was controlled by the B. & P. or A. & F. or A. & W., and the Pennsylvania Company had running arrangements only with them, according to the well-established rule, the Pennsylvania Company would not have been liable for the loss of that freight, and it is not to be presumed that it would, under such circumstances, voluntarily have paid it.

The fact that it did pay and make demand for its proportion of the loss on the receiver of the A. & W. was proper evidence to go to the jury tending to show a liability on its part for the running of the freight train and that there was some sort of joint running arrangements amongst the companies. If, as matter of fact, it

paid for the freight for any other reason, it would have been proper and competent for it to have so shown. If it be suggested that the freight may have come from the north, and that the Pennsylvania Company was liable by virtue of its bills of lading issued to shippers, the answer to that is two-fold; first, that railroad companies do not generally, by their bills of lading, make themselves liable beyond their own line, except for the safe delivery to the connecting carrier; and second, that the evidence of Wilkins shows that considerable of that freight was shipped from Baltimore (p. 183), and the fact that the Pennsylvania Railroad Company paid for the destruction of freight shipped from Baltimore over the B. & P., A. & F. and A. & W., is very cogent evidence that it controlled and was responsible for the running of trains over those roads.

TWENTY-THIRD EXCEPTION (pages 150 to 152, inclusive).

This bill of exceptions relates to the admission in evidence of the report of the directors of the Pennsylvania Railroad Company to its stockholders for the year 1885, covering the date of the accident. The questions raised by it are, in all essential particulars, like those presented by the seventeenth and eighteenth bills (pages 139 to 143), which have been considered.

TWENTY-FOURTH EXCEPTION (pages 152 to 169, inclusive)

This bill of exceptions relates to the admission in evidence of the reports of the officers of the A. & F. and the A. & W. companies made to the board of public works of the State of Virginia and filed in the

office of that board pursuant to the requirements of law, and published by the railroad commissioner of that State, in connection with his report to the legislature of that year, also required by the statute of that State. The laws of the State of Virginia upon that subject were duly proved and put in evidence without objection and by consent of the attorneys for the defendant, as appears on page 153 of the Record. The language of the section of the law requiring the reports to be made is as follows:

"49. *Every railroad corporation* in which the commonwealth is interested as a stockholder or creditor, or whose road is wholly within the State, shall make an annual report to the board of public works of its *condition and the state of its affairs* on the thirtieth day of September, and of the operations of its road during the year ending on that day; which report shall be verified by the oaths of its treasurer or president and acting superintendent of operations, and be filed in the office of the said board by the fifteenth day of November in each year—and shall contain full information upon the several items hereinafter enumerated to wit:"

[Here follow the particulars to be embraced in the report.] (Code of Virginia, 1873, ch. 61, sec. 49, and following.)

The language of the sections requiring the railroad commissioner to publish such reports with his annual report is as follows:

"9. The railroad commissioner shall make an annual report to the legislature of his doings, including such statements, facts, and explanations, as will disclose the actual working of the system of railroad transportation, in its bearing upon the business and prosperity of the commonwealth; and such suggestions as to the general railroad policy of the commonwealth, or as to any part

thereof, or as to the condition, affairs or conduct of any of the railroad corporations, as may seem to him appropriate, with a special report of all accidents, and the causes thereof, for the preceding year."

"10. The said commissioner shall require the annual returns to be made by railroad companies in manner and form, and at the time now provided for by law, and shall be authorized to require returns to be made of such other matters as he may deem expedient. When the return received from any corporation is defective, or probably erroneous, the commissioner shall notify the corporation to amend the same within fifteen days. The commissioner shall prepare such tables and abstracts of all the returns he shall deem expedient, and his annual report shall be transmitted to the governor of the commonwealth, on or before the first Wednesday in January in each year, to be laid before the legislature. The originals of the return or returns as amended, subscribed, and sworn to by the directors of the corporations, shall be preserved in the office of the commissioner." (Acts General Assembly of Virginia, 1866–70, ch. 254.)

The report of the railroad commissioner was duly proved by Mr. Goode, the public printer of the State of Virginia, who printed it and identified it as the authentic document (p. 152–3–4). He also testified that the reports of the two companies published in the report of the railroad commissioner given in evidence was printed from the original reports on file in the office of the railroad commissioner of the State, and that he read the proof thereof, and that the print contained accurate copies of the originals. It was also proved by the chief clerk of the railroad commissioner that the original reports in question were not to be found in the office where the law required them to be, and for that reason it was impossible to produce the originals. It was also

proved by Mr. Leib (p. 154), under whose direction the report of the A. & W. was made, that the one produced was a substantial copy of the original; and the witness Wilkins (p. 154), who was a director in the A. & F. at the time, testified that he knew such a report was made for the A. & F. It is submitted that sufficient foundation for admitting copies of the originals was laid, and that the printed book offered contained copies thereof; and it is also submitted that this was unnecessary; that these papers being public records and public documents, required by law to be made and published, all that was necessary was to prove the authenticity of the printed document, and that it thereupon became and is original evidence of the contents thereof.

1 Whart. on Ev., sections 64, 638, 639; 287, 288, 289, and authorities there cited.

1 Greenl. on Ev., sec. 479, and authorities there cited.

These reports are competent, pertinent, and material evidence in several important particulars.

They tend to negative the claim of the defendants that the A. & W. was operated by the receiver, and the A. & F. by trustees. Nothing is said about the receiver or the trustees in these reports. The report of the A. & W. also contradicts the evidence of Wilkins, who testified that the A. & W. at the time of this accident had no employees or rolling stock, and ran no trains. (p. 170). The report shows that it had both employees and rolling stock, and claimed to be running trains regularly. If Wilkins was right—correct in saying that the A. & W. had no rolling stock—then the report establishes beyond controversy that the Pennsylvania, the B. & P. and the A. & F. were operating the A. & W., and the tendency is to establish that a joint business was done

by the four companies over these roads. The report of the A. & F. shows that its president and general passenger agent were the same as the corresponding officers of the Pennsylvania Railroad Company. It also shows that Du Barry and Green, who claimed to be operating the road as trustees under a deed of trust, were directors of the company. And while this is so, there is no mention in the report that the road was being operated by trustees. It also appears from the report that Du Barry, one of the trustees and a director of the A. & F. and a director of the Pennsylvania Company, was the president of the A. & W., and that Roberts, the president of the Pennsylvania Company, was president of the A. & F. Stronger evidence could not be imagined tending to show that the A. & W. and the A. & F. were owned, controlled, and operated by the Pennsylvania Railroad Company and in its interest as one line.

TWENTY-FIFTH AND TWENTY-SIXTH EXCEPTIONS (pages 184 and 185).

These two exceptions were taken to the ruling of the court permitting Bennett, the pilot of the passenger train in collision, to testify substantially that his train had the right of way at the "gauntlet" on the night of the collision. These exceptions have become immaterial for the reason that the court subsequently instructed the jury, with regard to the printed rules, that the passenger train had the right of way, which simply renders the verbal evidence to that effect immaterial but not harmful, and therefore not an error at all; and even if it were a technical error, not one for which this court would reverse the judgment. Besides the evidence was not admitted at the instance of plaintiff, but that of the Virginia Midland Company.

## Exceptions to the Giving and Refusing of Instructions by the Court to the Jury.

The twenty-seventh, twenty-eighth, twenty-ninth, and thirtieth bills of exceptions (pages 185 to 187, inclusive), relate to the refusal by the court, at the request of the counsel for each of the plaintiffs in error, separately, to instruct the jury to return a verdict in favor of each of said defendants.

Of course neither of said instructions as prayed should have been granted, and the court did not err in refusing them, or either of them, if the evidence was sufficient to support a verdict againt the defendant praying the instruction.

New York, &c., Railroad Co. *vs.* Estell, 147 U. S., 617 and cases there cited.

Elliot vs. R. R. Co. 150 U.S. 245

The evidence tended to show that the collision and consequent injury to defendants in error were the result of negligence, and it is plain that there is sufficient of it to support a verdict to that effect against each and every of the defendants in the court below which the evidence showed was guilty of such negligence. The important question, therefore, upon these exceptions is, whether there is sufficient evidence tending to connect each of the plaintiffs in error with the acts of negligence complained of to support the verdict against such party.

In this connection it is important to bear in mind the acts, omissions or conditions, which the jury, in the light of the evidence, was justified in finding amounted to negligence causing the collision. In the first place they may well have found that maintaining tracks in the condition and position of those at the "arch," and running trains on double tracks which could not pass at this

on both sides there
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point, was negligence. In the second place they may have found that the reliance wholly upon the automatic electric signals to guide the trains past each other at this point, was negligence, especially as the evidence shows that they were frequently out of order, and that they were so on the night of the collision. Thirdly, the jury would have been justified in finding that there was negligence in the management of the Virginia Midland train; and fourthly, they may have found negligence in the management of the freight train which collided with it. And the jury would have been justified, under the evidence, in concluding that the collision resulted from any one or more, or all of these acts of negligence. Therefore, it was proper to submit the case to the jury as to each one of the defendants in the court below which the evidence tended to connect with either of these acts of negligence. Each of the plaintiffs in error is connected, by the evidence, with each of the above specified acts of negligence, though, in order to sustain the ruling of the court below, it is only necessary that each should be connected with one of such acts or omissions. That each is so connected will appear in considering the evidence and the instructions of the court thereon, embraced in subsequent bills of exceptions, rendering it unnecessary to go into the evidence upon a consideration of the exceptions to the several rulings of the trial court refusing to instruct the jury to find for each of the plaintiffs in error.

The subsequent and remaining exceptions to the instructions of the court to the jury, and its refusal to instruct as prayed by counsel for plaintiffs in error, may be properly and conveniently classified and considered under the following heads, to wit:

*A. The joint liability of plaintiffs in error.*

*B. Particularly as to the Pennsylvania Railroad Company.*

*C. Liability of each of the plaintiffs in error for the freight train.*

*D. Joint liability of the plaintiffs in error with the Virginia Midland Railroad Company for the Virginia Midland train.*

*E. Liability for the automatic electric signals.*

*F. Interpretation of the rules for running trains.*

*G. As to the receiver of the Alexandria and Washington Railroad Company.*

*H. As to the trustees of the Alexandria and Fredericksburg Railway Company.*

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## A

## Joint Liability of the Plaintiffs in Error.

THIRTY-NINTH EXCEPTION (pages 190–1), FORTY-FIFTH (page 194), and FIFTY-SIXTH (pages 207–8.)

These exceptions relate to the prayers of the counsel for plaintiffs in error in relation to the question of the joint liability of the defendants for the negligence of one, the instructions of the court upon that point, and the exceptions of defendants' counsel to such instructions.

The prayer embraced in the thirty-ninth bill of exceptions, page 191, asked the court, substantially, to instruct the jury that if they found that the employees of the freight train were wholly paid by the trustees of

the A. & F. and the receiver of the A. & W. for the services they rendered south of Long Bridge, and that those two roads and the B. & P. were managed by one set of superintendents and officers, who were paid *pro rata* by the three roads, then the B. & P. Company was not liable.

The prayer found in the forty-fifth bill of exceptions, page 194, requested the court to instruct the jury that if those companies transported persons and property from Washington to Alexandria on the A. & W. road for the mere purpose of convenience, each paying its proportionate share of expenses of doing the business and receiving its proportionate share of the proceeds, that was not sufficient to make them partners, nor one agent for the other, so as to create a joint liability. The prayer is faulty in assuming as facts the hypotheses upon which it was based, leaving nothing to the jury.

The court refused both these prayers and instructed the jury upon this point of joint liability substantially to the effect that if they should find from the evidence that there was an arrangement by which the several trains run by each of said companies over these several roads were run in the interest of all, each contributing to the expense and sharing a proportion of the profits as they might be determined upon by a common agent, according to a rule agreed upon by them, so that the business between Baltimore or Washington and Quantico was a single business and conducted as that of one line by these three companies over these roads, this would render each defendant who was a party to such arrangement jointly liable for any negligence of either of said companies. (Pages 199 and 200.)

On page 200 the court, in its general charge, gave all the prayer embraced in the forty-fifth bill of exceptions, which correctly propounded the law, except that part

relating to inferences and burden of proof, and those principles are stated in the general charge (p. 204).

The instruction given by the court upon the subject of joint liability, embraced in the exception on page 208, together with what immediately follows that in the general charge (p. 200), undoubtedly states the law correctly applicable to the evidence upon that subject.

In this connection the attention of the court is directed to some of the leading facts in evidence, which fully authorized the jury to find that the A. & F., A. & W., and the B. & P. did a joint business on these several roads, operating the line from Baltimore to Quantico as one; that the three roads, were consolidated into one, so far as the practical operations and business of common carriers were concerned. The advertisement in the *Star* shows that it was a consolidated line (pp. 79 and 80). The employees of all the companies were paid by the same person (p. 100).

The operating and accounting officers of the three companies were the same (p. 169, &c.); the A. & W. was managed through the organization of the A. & F., and the tickets over the former were issued in name of the latter (pp. 169–70–1); that while Wilkins was receiver of the A. & W. he was also superintendent of the A. & F., and in the employ of the B. & P. (p. 169).

The contract or arrangement for carrying the mail between Alexandria and Washington was with the A. & W., but the compensation was divided amongst the three companies (pp. 102 and 180–1). It is a significant fact in this connection that Wilkins, the receiver, did not even know what proportion of this money the A. & W. received.

It also appeared that the engineers and other employees borne upon the pay-rolls of the B. & P. and A. & F. ran from Baltimore to Quantico with engines of either road,

as convenience seemed to require (p. 101). This statement of the evidence is confirmed by the cross-examination of witnesses Bowler, Davis, Black and Redmiles, introduced by plaintiffs in error (pp. 183–4).

George C. Wilkins, who was the receiver of the A. & W. at the time of the collision, and who had been its superintendent prior to his appointment as receiver, and who was also at the time of the collision the superintendent of the A. & F. and in the employ of the B. & P. in some undefined capacity (p. 169), was introduced as a witness for plaintiffs in error and on cross-examination said that when he was appointed receiver he found an arrangement existing by which all the earnings of the three companies went into the hands of a common treasurer, and the expenses and profits of the business were prorated amongst the three companies, and being pressed to state definitely, what the arrangement was, stated. "*Well the rights of the A. & F. Railway are somewhat difficult to define, because there never has been any written contract between the respective interests. The B. & P., the A. & W. and the A. & F. roads have a community of interests South of Washington, which make it both economical and desirable to operate as one interest, although an accurate subdivision of both earnings and expenses have at all times been made upon the books of the Auditor and treasurer*" (pp. 173–4). His whole cross-examination (pp, 169 to 183) tends strongly to corroborate the evidence in behalf of the plaintiffs below, that the three roads were operated jointly as one line. Indeed the brief statement of the tendency of a portion of the evidence in behalf of said plaintiffs (pp. 98 to 103) with the oral evidence of said Wilkins above referred to, even if there was no other evidence in the record upon that point, is amply sufficient to support the verdict of joint liability, and the law upon that

point was correctly stated by the court in the portion of the charge above referred to.

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## B.

## Especially as to the Liability of the Pennsylvania Railroad Company.

SIXTY-[redacted] EXCEPTION (page 211) and SIXTY-[redacted] (page 212).

The court, in its general charge, pages 203 and 204, gave the instruction upon that point, as requested by the attorney for the defendants, with the exception of a single sentence. The request was that the court should say to the jury that the ownership by the Pennsylvania Railroad Company of stock and bonds in either of the other companies had no tendency to show that that company had such connection with the other defendants as to render it liable in this action.

The court modified it by holding that it was competent evidence to go to the jury, but not sufficient in itself to establish or prove such liability, and also added, in that connection, that it would not be sufficient to show in addition that the directory of the Pennsylvania Railroad Company and one or more of the other defendant companies were composed to a greater or less extent of the same persons, but that in order to find the Pennsylvania Railroad Company liable in this action the jury must find that there was some actual arrangement by which the latter company was interested with the other companies in running the trains over this road (the A. & W.), which the other companies were interested in, or that there was some arrangement or con-

dition of things by which the Pennsylvania Company had the right, as between the parties, as a corporation, to and did issue any order or regulation that it chose to those engaged in running trains over the A. & W. Railroad, and that such order or regulation, when made, was accepted and obeyed.

It is submitted that the direction of the court, in that regard, was all that the counsel for defendants were entitled to.

The following are some of the leading points in the evidence tending to show the liability of the Pennsylvania Company:

John S. Barbour, late a United States Senator from the State of Virginia, was the president of the Virginia Midland Railroad for many years. He was examined as a witness for the plaintiffs below, and his evidence proves conclusively that the Pennsylvania Railroad Company controlled and operated the line from Washington to Quantico, consisting of B. & P., A. & W. and A. & F. for many years, and up until the time of his retirement from the presidency of the Virginia Midland in December, 1884, less than sixty days prior to the collision in question (p. 49). He negotiated the arrangement by virtue of which the Virginia Midland trains ran from Alexandria to Washington over the other roads, first, with Mr. Scott, and subsequently with Mr. Roberts, successive presidents of the Pennsylvania Railroad Company, at its office in Philadelphia, (pp. 70 and 71). In speaking of that arrangement he says:

"So far as the contract was made, it was an entirety with the Pennsylvania Railroad people from Alexandria to Washington. There was no division when the matter was discussed with Mr Roberts and the principal officers of the Pennsylvania road. There was no discussion as to who owned the road between Alexandria and

the south end of Long Bridge, or who owned the line from the south end of the Long Bridge to the Sixth Street depot. *We discussed it as an entirety, as property under the control of the Pennsylvania Railroad Company.* They were running the Baltimore and Potomac, and they were running a through line from New York to Quantico in the latter part of the period." (Record, p. 53.)

Mr. Barbour further testifies that this arrangement continued, without interruption or changes, except as to details, down to the end of his administration of the affairs of the Midland Company, about January 1, 1885. Upon the question of the connection of the Pennsylvania Company with the control and running of the A. & F., A. &. W., and B. & P., the whole of Mr. Barbour's evidence (pp. 49 to 72 is important).

This view is also supported by the testimony of Wilkins, a witness for the plaintffs in error, who says he became superintendent of the A. & W. road in 1875 (p. 170), and remained such until he was appointed its receiver in 1882, (p. 179), and that he did not know who made the arrangement with the Virginia Midland for the running of its trains; that he found it in existence when he came in as receiver, (pp. 170–1.)

Evidence also tending to show that the Pennsylvania Company controlled the A. & W. is found in the resolution of the board of directors of the last-named company, appointing Leib agent to receive from the Post-Office Department moneys for the transportation of mail. It appears by this resolution that the meeting of the board of directors at which it was passed was held at the office of the Pennsylvania Company in Philadelphia on the 24th day of November, 1876. (See p. 76) Why was the meeting of the directors of this Virginia corporation held at the office of the Pennsylvania Rail-

road Company in Philadelphia if the latter company did not control the former?

Also the advertisement of the line from New York to Quantico as one line over these several roads by the Pennsylvania Company. (See pp. 79 and 80 for the advertisement, and p. 100 for proof that it was inserted in the paper at the instance of and paid for by that company.)

It is to be noted that at the close of that advertisement the public is referrred for information to the office corner of Pennsylvania Avenue and 13th street, which is exclusively the office ot the Pennsylvania Railroad Company (p. 33).

The reports of the board of directors of the Pennsylvania Company for the years 1884 and 1885 (pp. 140–1–2–3 and 150–1–2), One of these reports contains a map (p. 142) showing a line from Philadelphia to Quantico, composed of the P., W. & B., B. & P., A. & W., and A. & F., and marked as the lines of the Pennsylvania Railroad Company. These reports also show that the Pennsylvania Company owns most of the stock and all the bonds of the B. & P., and all the bonds of the A. & F.

This last mentioned fact is also shown by the petition of the Pennsylvania Railroad Company presented to a Virginia court for the purpose of appointment of a new trustee in the deed of trust securing said bonds, introduced in evidence by the plaintiffs in error, and it is also manifest from the proceedings upon such petition that said trustees, Du Barry and Green, were appointed by the court by the consent of the A. & F. and on the motion of the Pennsylvania Railroad Company (pp. 122 to 130). These trustees were both Vice-Presidents of the last-named company, and from all the evidence no other conclusion is deducible, than that that company operated the A. & F. through the corporate organization

of the two, and the B. & P. composed largely of the same persons, in doing which they ran their trains over the A. & W. which, by some arrangement not specifically disclosed in the evidence, the Pennsylvania Railroad Company controlled before the receiver was appointed, and continued to control subsequently, the receiver taking from the Pennsylvania Railroad Company what it saw fit to give him for the benefit of the creditors of the A. & W. and taking no part in the active operations.

Barbour says (p. 61) that the A. & F. was originally constructed by the Pennsylvanta Railroad Company. That is probably the reason why it owned all its bonds and it seems to have been operating this road through the nominal intervention of trustees in order to avoid liability as far as possible

Also see in this connection the reports made by the officers of the A. & W. and the A. & F. to the Board of Public Works of Virginia (pp. 155 to 168). The principal office of the A. & F. was in Philadelphia, (p. 168), presumably at the Pennsylvania Railroad office, as most of the principal officers of it were also officers of the last-mentioned company. And although Wilkins says (p. 170) that the A. & W. had no employees or train hands, it reports both. No other conclusion can be drawn from this state of facts than that the Pennsylvania Railroad Company owned or controlled the whole line, including roads and rolling stock, and apportioned the latter properly appertaining to the A. & F. and B. & P. amongst the three companies, for some purposes of its own.

The ticket sold by the Pennsylvania Company from Baltimore to Quantico. (See pp. 144 and 145.)

It was also proved by Mr. Parke, the Washington passenger agent of the Pennsylvania Company, that that company sells tickets from Washington to southern

points over the A. & F., and, of course, they must necessarily pass over the B. & P. and A. & W. (See p. 33). Mr. Parke also says that he was employed and paid wholly by the Pennsylvania Company (p. 32), but his office was in the Sixth-street depot building (p. 38), and that it is a part of his duty to look out for the interests of the B. & P. and A. & F. (p. 38).

In considering the effect of these tickets sold by the Pennsylvania Railroad Company from Baltimore and Washington to southern points, it is to be remembered that the road of that company proper extends only from Pittsburgh to Philadelphia. Therefore when that company sold a ticket from Baltimore to Quantico, bearing its official corporate stamp, as Wilkins who was familiar with it testified, the conclusion must follow that somewhere between Baltimore and Quantico that company owned or controlled some road; for he says *that no railroad company* (and he is an experienced railroad man), sells a ticket for a journey no part of which is over a road owned or controlled by it, (pp. 144 and 182), and probably that is matter of common knowledge of which the court would take notice without proof. This same remark applies with equal force to the tickets sold by that company in Washington for the South. What road did that company own or control between Baltimore and Quantico if not the B. & P., A. & W. and A. & F.? If it controlled and operated any one of them it is sufficient to render it liable in this case, as the evidence is sufficient to prove that the other plaintiffs in error were operated jointly as one line.

Tickets were issued by Wood, general passenger agent of each of plaintiffs in error, over the A. & W., in the name of the A. & F. (p. 170).

Another strong circumstance tending to show that the Pennsylvania Railroad Company was operating

this line from Baltimore to Quantico is found in the fact that it acknowledged itself as the common carrier of the freight on the freight train destroyed in the collision, by paying the consignees therefor, and then making demand upon Wilkins, receiver of the A. & W. for reimbursement. (pp. 146 to 149). It is not very clear whether the demand made on the receiver was for the whole that had been paid by the Pennsylvania Railroad Company, or a portion thereof, but that is immaterial to the point under consideration. The important fact established is that that company acknowledged its liability for freight destroyed on the line of the A. & W. road, being transported by the rolling stock and employees of the B. & P. and A. & F. Common carriers, unless they make themselves so by their bills of lading, are not liable except for safe delivery to the connecting carrier, and it is known to be the universal custom for them to limit their liability to such delivery in their bills of lading rather than to expand it. The payment, therefore, by the Pennsylvania Company for this freight was, unexplained, an admission that it was a common carrier of these goods at the time and place of destruction, and no evidence was offered, as might have been done had the fact been so, to show that it paid for any other reason. In the case of Ins. Co. *vs.* Railroad Co., 104 U. S., 157, it is said that "the carrier, in the absence of a special contract, express or implied, for the safe transportation of goods to their known destination, is only bound to carry safely to the end of its line, and there deliver to the next carrier in the route."

In the light of this principle the evidence of the dealing by the Pennsylvania Railroad Company with the freight destroyed in the collision in question, is strong evidence tending to show that the point of collision was on its line, and not on a connecting line.

That there was no other reason for such payment is clearly shown by the evidence of Wilkins on cross-examination (p. 183) where he testifies that considerable of the freight was shipped at Baltimore, and unless the Pennsylvania Railroad Company owned or controlled this line to Quantico, its bills of lading would not have been given therefore, and still it paid for all freight without distinction.

No evidence was introduced by defendants tending to rebut the above most cogent proof, and it is not only sufficient to have required the court to submit the question of the liability of the Pennsylvania Railroad Company to the jury, and to sustain the verdict against it, but had there been a verdict in its favor the court should have set it aside.

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## C.

## Liability of each of the Plaintiffs in Error for the Freight Train.

FIFTY-seventh EXCEPTION (p. 208).

In the charge (p. 202), the court instructed the jury that if they should find that the accident was caused by the negligence of the employees of the fast freight, then the defendant company or companies under whose authority that train was then conducted and controlled would be liable. The above exception is to that portion of the charge.

In what particular that is objectionable it is difficult to perceive. It is a clear, concise statement of an elementary principle peculiarly applicable to the facts of this case.

In this connection attention is called to the fact that the evidence in the case connects each one of the plaintiffs in error with this train. The train at the time was on the road of the A. & W., which is enough in itself to render that company liable; the engineer and fireman were employees of the B. & P.; the engine was that of the A. & F., and the conductor and [redacted] were employees of the last-named company; the cars belonged to the A. & F., B. & P., and other companies. The train was being run under telegraphic instructions from H. H. Carter, issued at Wilmington, headquarters of the P., W. & B., a road of the Pennsylvania system composing a part of the line from Philadelphia to Quantico. The Pennsylvania Railroad Company recognized its connection with and liability for this train by paying to shippers the value of the freight on the train destroyed by the collision. The evidence establishing these facts is referred to, and the pages of the record where the same may be found are specified under the foregoing heads of "joint liability" and "liability of the Pennsylvania Railroad Company," and need not be repeated here.

The York and Maryland Line Railroad Co. *vs.* Winans, 17 How., 30.
Peters *vs.* Ryland, 20 Pa. St., 497.
Bostwick *vs.* Champion *et al.*, 11 Wend., 572.
Bissel *vs.* M. S., &c., Railroads, 22 N. Y., 258.
Cuddy *vs.* Horn, 46 Mich., 596, 603.
Stone *vs.* Dickinson, 5 Allen, 31.
Bank *vs.* Adams Express Co., 93 U. S., 174.

The case of the York and Maryland Line Railroad Company *vs.* Winans was an action for damages for the infraction of a patent in manufacturing and using the patented device in cars used upon the road of the plaint-

iff in error. The defense was that the plaintiff in error did not manufacture the cars, nor use them, although they were used by another corporation on the road of the plaintiff in error. The facts in that case, bearing upon the question of joint liability were very similar to the facts now under consideration, and the principles there adjudicated apply with great force here.

In delivering the opinion of the court in that case Mr. Justice Campbell said:

"The plaintiff is a corporation existing under a charter from the State of Pennsylvania, and authorized to construct a railroad from the town of York to the Maryland line. Its stock was subscribed for by the Baltimore and Susquehanna Railroad Company, a Maryland corporation, and their joint capital is vested in a continuous railroad from the city of Baltimore to York. The management of the road is committed to the Maryland company, which appoints the officers and agents upon it, and furnishes the rolling stock necessary for its operation. The president and secretary of the two companies are the same. The directors of the Pennsylvania corporation (plaintiff) are selected by the Maryland company, and are qualified by a transfer of one or more shares of stock to them, shortly before an election, and which they return on vacating their office. This nominal organization is made necessary by the charter, which requires that the majority of the officers shall be citizens of Pennsylvania, and that annual reports of the condition and business of the company shall be rendered to the legislature. To preserve appearances with the legislature, an annual statement is made."

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"But the case before us is, that the motive power on the road partly belongs to the plaintiff; that the agents and

officers employed are in its service and are paid by it; and that the cars are fitted and repaired at the common expense of the two corporations. It follows, therefore, that the plaintiff is a principal, co-operating with another corporation, in the infliction of a wrong, and is directly responsible for the resulting damage."

The case of Peters *vs.* Ryland, *supra*, is referred to in that opinion with approval and the following quotation made from that case:

"The court held that the owner of a passenger car employed on a railroad belonging to the State, and the motive power and superintendence of which is furnished by the State, is responsible for the misconduct of the public agents. It says: 'The case is *sui generis*; but it comes much nearer to that class of decisions in which it has been held, that several parties engaged in carrying over different portions of the same line of conveyance, each sharing in the profits of the whole route, and of course of each section of it, are all responsible for the faithful discharge of their duty, and liable to respond in damages for any injury which results from the negligence or unskilfulness of any of the proprietors and servants. 11 Wend. 571; 18 *ibid.* 175; 19 *ibid.* 534."

"The State, as well as the carrier, is paid for every passenger transported on this railroad, which shows their community of interest; and if there be a common liability, that of the State cannot be enforced by action; and this circumstance does not diminish that of the carrier; because they have a common interest, however, and share the business of transportation, it is apparent that in holding the party before us to answer for the negligence of the State's agents, we do not punish one man for the misfeasance of another's servants."

The facts of that case upon the point of joint liability are quite like the facts in the present cases.

The case of Bostwick *vs.* Champion *et al.*, *supra*, was an action against proprietors of a stage coach who managed their line much in the same manner that the plaintiffs in error are shown to have done, the line being divided into sections, each section having its separate stock and manager, the fare for the entire route being divided amongst the proprietors of each section in proportion to the length of the line run by him. The opinion in the case holding all liable for the negligence resulting in injury to plaintiff on one section was delivered by Mr. Justice Nelson who goes at length into the facts of the case and the reasons for the rule. The case was afterwards affirmed by the court for the correction of errors of New York, Chancellor Walworth delivering the opinion to which attention is invited.

In the case of Bissel *vs.* The Railroads, *supra*, the court says: "A general statement of the plaintiff's case is, that the two corporations defendant were jointly engaged in the business of carrying passengers and freight between Chicago and Lake Erie, through a part of the State of Illinois, and through the States of Indiana and Michigan, by three connected railroads which they owned or controlled, and the business of which was managed under a consolidated arrangement which had been in force between the defendants for some time previous to the injury complained of." There were three roads, one in Michigan, one in Indiana and the other in Illinois. The accident occurred on the latter. The two former were sued and a joint verdict against them was sustained.

In the case in 46 Mich. there was a joint action against two steamboats which injured plaintiff by their collision. It was held, that "An act wrongfully done

by the joint agency or co-operation of several persons will render them liable jointly or severally."

In the case in 5 Allen the Supreme Court of Massachusetts said:

"It is the fact that they all united in the wrongful act, or set on foot or put in motion the agency by which it was committed that renders them jointly liable to the person injured."

The principle oft hese two last cases seems to apply especially to the facts in relation to the freight train.

The foregoing authorities make a distinction as to joint liability between consolidated lines and merely connecting lines, such as are referred to in Insurance Company *vs.* Railroad Company, 104 U. S., *supra.*

The authorities referred to by Mr. Justice Cox, in his opinion in the court below (pp. 221–2), are also pertinent in this connection.

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## D.

## Joint Liability of the Plaintiffs in Error with the Virginia Midland Railway Company for the Passenger Train.

EXCEPTIONS 35 (page 189), 38 (pages 190, 252), 40 (page 191), 41 (page 192), 42 (page 192), 43 (page 193), 44 (page 193), 46 (pages 194–5), 47 (page 195), 48 (pages 195–6) and 49 (page 196).

These exceptions all relate to the refusal of the court to instruct the jury as prayed by the counsel for the defendants as to the effect of the negligence of the engineer of the Virginia Midland train, and the effect of

that train running under the authority of Bennett, the pilot, placed there by the plaintiffs in error.

The thirty-fifth and thirty-eighth exceptions (pages 189 and 190), relate to the relation which the said pilot sustained to the passenger train in collision, and the plaintiffs in error.

The prayer found in the thirty-fifth bill of exceptions is to the effect that the B. & P. cannot be held liable for injuries to the plaintiffs, unless its agents were guilty of negligence, causing or contributing to the accident, and that such agency could not be inferred from the fact that Bennett, the pilot on the Virginia Midland train, wore the uniform of, and was paid his salary in part by, the B. & P.

The prayer found in the thirty-eighth bill of exceptions (page 190) asks the court to instruct, that although they find that Bennett, the said pilot, was placed on that train by the B. & P., with authority to control its movements, still the B. & P. would not be liable unless he actually exercised some affirmative control over the train after it started from Alexandria.

It is submitted that neither of those prayers should have been given in any event. The one in the thirty-fifth exception ignores the well-settled principle that a corporation may be guilty of negligence through any employee, and that it is not necessary to prove that the party acting for it is, technically, an agent; besides, if it were necessary to prove, agency or such connection between the pilot on that train and the B. & P. as to make the latter liable for his negligence, it would seem that the fact that he wore its uniform and received at least part of his wages from that company would be sufficient proof of that fact if not rebutted. At all events, it was evidence tending to show that he was in the employ of that company and that it was liable for

his negligence, and it was proper for the jury to consider it with the other evidence, while the prayer substantially asked to withdraw it from their consideration altogether.

The prayer in the thirty-eighth bill of exceptions totally ignors the principal that a party may be guilty of negligence by omitting to act as well as in acting. It was as much the duty of the pilot of that train to watch the signals and movements of the train and keep it out of danger as it was of the engineer, and probably more so. To say that the company or companies responsible for his acts, or failure to act, would not be responsible for his neglect to watch and control the movements of the train, whereby the accident was caused or contributed to, would be strange doctrine.

The other prayers of the counsel for the defendants under this head are in relation to the effect of the negligence of Bruce, the engineer of the Midland train, and are, some of them, to the effect that if the accident was wholly caused and others of them if it was contributed to by his negligence, then the Virginia Midland Company only was liable. The court properly ignored this view, and therefore declined to give any of those prayers; but on the contrary instructed that the company or companies to which the Virginia Midland train was turned over at Alexandria, and whose pilot or conductor took charge of it there, were equally liable with the Virginia Midland Company for any negligence of the engineer, Bruce, on the ground and theory that by that arrangement the Virginia Midland surrendered entire control of its train at that point, and the same was under the control of such of the other defendants as were responsible for the running of trains between Alexandria and Washington (See charge pp. 200–1).

To this point in the charge of the court there is no exception. It is submitted that the law, under the facts as they appear in the Record, was correctly stated by the court in the charge.

Railroad Co. *vs.* Barron, 5 Wal., 90.
McElroy *vs.* N. & L. R. R. Co., 4 Cush., 400.
Bissel *vs.* M. S., &c., R. R., 22 N. Y., 258.
Little *vs.* Hacket, 116 U. S., 336.
Cuddy *vs.* Horn, 46 Mich., 596.

The prayer found in the forty-eighth exception (pp. 195–6) requested the court to instruct the jury that where a passenger is injured by the concurrent negligence of two carriers, the one in whose vehicle the passenger is, is alone liable.

This statement of the law is against the well settled rule, and was properly rejected by the court.

Little *vs.* Hacket, 116 U. S., 336.
Cuddy *vs.* Horn, 46 Mich., 596.

Ohio. Can. R.R. Co. v Ross 142 U Ill 9.

Besides, the prayer contained the statement of an abstract question, without reference to the facts of this case. The facts are that the Virginia Midland and the companies operating the A. & W. were engaged as joint carriers of the plaintiffs at the time of the accident.

In the case of the Railroad Company *vs.* Barron, *supra*, it was held that the company which owned the road made itself liable for the negligence of another company running its trains on the road of the former with its consent, although it had no control over the train or its employees. The same rule, of course, would apply to a company controlling a road as to the actual owner thereof.

But the result shows that even if the court had been in error in its instruction upon this point the plaintiffs in error have not been injured by it, as the jury found that there was no negligence on the part of Bruce contributing to the accident. Had they found otherwise they would have returned a verdict against the Virginia Midland under the instructions of the court, as well as the other defendants below. The result would have been the same had the instructions been given as prayed. The jury found that the negligence resulting in the collision was that of the employees of the freight train, or the faulty and defective signals, or the defective construction of the road at this point.

By that arrangement the Virginia Midland train, when it left Alexandria under the absolute control of a man placed thereon representing the management of the A. & W. and B. & P., that train became, for the journey between Alexandria and Washington, the train of the defendants operating those roads, and all the employees of it, so far as the effect of their negligence was concerned, were agents and employees, not only of the Virginia Midland, but also of the roads under whose exclusive control the train was running. Those defendants, therefore, were equally responsible with the Virginia Midland for any negligence of Bruce, which caused or contributed to the accident.

There was no dispute as to the fact that by the arrangement the Virginia Midland surrendered all control over its train and the employees thereon at Alexandria, and that the train was run from there to Washington as the train, and under exclusive control of W. H. Carter, superintendent, and his subordinates, whatever roads or companies he and they represented in so doing. Both Barbour, the president of the Virginia Midland,

and Wilkins, the receiver of the A. & W., and superintendent of A. & F. and B. & P., agree in this statement (pp. 69, 100, 178 and 179).

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## E.

## Liability for the Automatic Electric Signals.

THIRTY-SECOND EXCEPTION (page 187), and SIXTIETH (page 210).

The prayer found in bill of exceptions 32 (page 187) requested the court to instruct the jury that they could not lawfully infer or find that the automatic signals in use at the time and place of the accident, as managed and conducted, were insufficient or not proper for the careful management and protection of trains at that point. The court refused to give that instruction, and instructed the jury that if they should find that these signals were out of order and did not work on the night of the accident, and that because of this the collision occurred, then the A. & W., or its receiver, and any other of the defendants that the jury might find were associated with it or him in operating the A. & W. road, would be liable; and this direction is excepted to in bill of exceptions 60, page 210.

The evidence in relation to these signals, tending to establish that each showed a white light at the time the trains respectively passed them that night, and thereby deceived the engineers, is found on pages 101–2 of the record. The order of Carter the superintendent, notifying employees of their erection and use is found on page 72. It contemplates the possibility of the sig-

nals getting out of order and failing to perform the function for which they were intended by giving directions for running trains at this point "*should the signals fail to work.*" See also evidence of Thomas Taylor, a witness for plaintiffs in error. He had charge of the electric signals, but had no experience with such contrivances until these were put up, and they were frequently out of order and he had to send for the man who put them up to fix them (p. 184). That the evidence is sufficient to justify the conclusion that the failure of these signals to work caused or proximately contributed to the accident cannot admit of doubt.

Attention is called to the fact that this notice is dated at Wilmington, and directed to the B. & P., the A. & W. and the A. & F. roads, and signed by Carter who was superintendent of the P., W & B., as well as of the other three companies. Why direct the notice to the B. & P. and A. & F. roads, if they were not each running trains over this road?

These signals had, prior to their erection at four mile run, been in use at the tunnel east of Washington on the B. & P., and for some reason not explained their use at that point was discarded. At Carter's suggestion they were removed to the scene of this accident. (See evidence of Kates, page 184.) The dealings with these signals, and the said notice in relation to them, all go to show that these three roads were operated as one line.

Kates who put up the signals under the direction of Carter was in the employ of the Pa. R.R. Co. (p 139)

## F.

## Interpretation of the Rules for Running Trains.

THIRTY-THIRD AND THIRTY-FOURTH EXCEPTIONS (page 188), FIFTY-EIGHTH (page 209), FIFTY-NINTH (page 210), and SIXTY-FIRST (page 211).

These exceptions relate to the proper construction to be placed upon the running rules given in evidence, as to which of the trains, if either, in collision, had priority at the "arch." The defendant's counsel claimed that the rules did not apply to the "arch," and that consequently there was no priority of one train over the other at that point, and in the prayers mentioned in the bills of exceptions thirty-third and thirty-fourth (page 188), they requested the court to so instruct. The court, on the contrary, instructed that those rules did apply at the "arch" and that according to their proper interpretation the north-bound passenger train had the right of way at that time and point, and to this instruction of the court the defendants counsel excepted, and that is the subject of bills on pages 188, 209, 210 and 211. These rules are found in the Record, commencing at page 85, and it seems too plain for argument that the interpretation of them and the direction given accordingly by the court in the general charge are correct. (See the charge of the court, pp. 201–2.)

That the interpretation of the printed rules, in the absence of any ambiguity, was a question for the court, needs no citation of authority.

That they were correctly interpreted by the court there can be no doubt. The main contention of the plaintiffs in error was that the rule No. 1 on time table

between pages 40 and 41, and rule No. 90 (p. 45) referring to the running of trains over single tracks did not apply at the "gauntlet," as there were two tracks at this point. But there was no controversy but that there was, practically, for the purpose of trains passing each other, but a single track, and therefore, the rules in relation to running trains over single tracks must have been intended to apply to this point. This is not left to construction or inference, for the order of Superintendent Carter, who had the supreme authority in the matter, in his order announcing the erection of the electric signals, and directing the method of their use, refers to rule No, 90 and says its provisions apply and that it will be observed in running trains at that point. He designated that part of the road as having a single track (see the order p. 72). Before the rules were put in evidence the defendants in error gave some evidence upon this point in harmony with the rules. The plaintiffs in error also gave some oral evidence in conflict with them. But the court finally withdrew all this oral evidence from the consideration of the jury and instructed them as to the proper construction of the rules as applied to the running of the two trains in question at this point, and in that there was no error, either in the withdrawal of the oral evidence or the construction and application of the rules.

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## G.

## As to the Receiver of the A. & W.

THIRTY-FIRST EXCEPTION (page 187) and FIFTY-FIRST and FIFTY-SECOND (page 205).

These exceptions relate to the instructions asked by the attorneys for plaintiffs in error and to those given by

the court, upon the effect of the receivership of the A. & W. The said counsel asked the court to instruct, substantially, that if the jury found that all the property of that road at the time of the accident was in the exclusive control of the receiver, then their verdict must be in favor of that company.

In the general charge to the jury (pages 197 and 198) the court gave that instruction substantially, and, in connection therewith, gave the converse of the proposition, to-wit: That if it was not in the exclusive control of the receiver, but that his only duties were to receive the net earnings of that road and account to the court for them, and if the jury should find the A. & W. guilty of negligence causing the accident, then the verdict should be against that company. That the negligence, in order to render the said company liable must have been in whole or in part the cause of the collision, the jury was told in the general charge, in relation to the freight train and passenger train (pp. 200–1); but the defendants excepted to the converse of the proposition as given by the court, and also to the proposition as given by the court in accordance with their prayer found on page 187. These two last exceptions are found on page 205, and the three may properly be considered in connection.

The following are some of the leading facts shown in evidence important to be borne in mind in considering this exception:

The report of the A. & W. to the Board of Public Works of Virginia showing that the company and not the receiver operated the road (pp. 154 to 161).

The receiver did not make the arrangement by which the trains of the Va. Mid., the A. & F., and B. & P. ran over the tracks of the A. & W., or the arrangement by

which the mail was carried over the A. & W., and did not know by whom the same were made. He found an arrangement under which all this was being done when he was appointed, and permitted it to continue. He sold no tickets over the A. & W. and did not know into whose hands, in the first instance, the money went for tickets sold over that road, but he finally received from Leib the proportion belonging to the A. & W. The A. & W. had no rolling stock or employees in his employment or control as receiver while he acted as such. The compensation paid by the Virginia Midland for the privilege of running its trains over the A. & W. and the other roads was paid by it as an entirety to Leib, and the receiver got the proportion of the A. & W. from him (pp. 169–70–1). That the receiver did not know which of the said companies, the A. & F. or the B. & P. furnished the rolling stock and employees to run the local trains over the A. & W. road while he was receiver (p. 170)

Plaintiffs in error put in evidence the receipt of Wilkins as receiver for the assets of that road which came to his hands upon appointment, and there is no rolling stock included in the assets (pp. 133 to 135). Receiver did not know what proportion of the money for carrying the mails between Alexandria and Washington, was received by the A. & W. (pp. 180–1). The arrangement of the Government for carrying the mail was with the A. & W., and Leib received it as agent of that company and divided it amongst the three companies in some proportion unknown to the receiver.

He gave no public notice of his appointment or that he was operating the road (pp. 181–2). Nothing is plainer than that the A. & W. was operated by the Pennsylvania Railroad Company, through the organizations of the B. & P and A. & F., and that Wilkins was one of their agents for that purpose, and as receiver had noth-

ing to do with the operations of the road, and no control or knowledge as to the actual earnings thereof, but received without inquiry from Leib the sum set apart to him by the managers of the Pennsylvania system for the benefit of the creditors of the A. & W. and paid it into court substantially as set forth in the supposition stated in the charge of the court above referred to.

The cross-examination of Wilkins (pp. 169 to 183, inclusive) is important to be considered in this connection, and establishes the fact that the receivership was merely nominal. The evidence of Barbour (pp. 67–8 is to the same effect.

It is submitted that the court correctly stated the law upon this point, and that the defendants have no valid ground of exception thereto.

Railroad Co. *vs.* Brown, 17 Wall., 445.
Patterson's Railway Ac. Law, pp. 132 and 133, secs. 129 and 139 and authorities there cited.

In the case above referred to in the 17th Wallace the action was against a railroad company which was in the hands of a receiver and was being operated in connection with another road in the hands of lessees, much as the A. & W. was being operated in connection with the B. & P. and A. & F. In the opinion of this court in that case it was said:

"It is the accepted doctrine in this country, that a railroad corporation cannot escape the performance of any duty or obligation imposed by its charter or the general laws of the State by a voluntary surrender of its road into the hands of lessees. The operation of the road by the lessees does not change the relations of the original company to the public. It is argued, however, that this rule is not applicable where the proceeding in-

stead of being voluntary, is compulsory, as in the case of the transfer of possession to a receiver by a decree of a court of competent jurisdiction. Whether this be so or not, we are not called upon to decide, because it has never been held that the company is relieved from liability, unless the possession of the receiver is exclusive and the servants of the road wholly employed and controlled by him. In this case the possession was not exclusive, nor were the servants subject to the receiver's order alone. On the contrary, the road was run on the joint account of the lessees and receiver, and the servants employed and controlled by them jointly. Both were, therefore, alike responsible for the act complained of, and if so, the original company is also responsible, for the servants under such an employment, in legal contemplation, are as much the servants of the company as of the lessees and receiver."

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"Besides, the company having permitted the lessees and receiver to conduct the business of the road in this particular, as if there were no change of possession, is not in a position to raise any question as to its liability for their acts."

The principle of the authorities cited in support of the next point also applies here.

## H.

## As to the Trustees of the A. & F.

THIRTY-SIXTH AND THIRTY-SEVENTH EXCEPTIONS (pages 189 and 190) AND FIFTY-THIRD, FIFTY-FOURTH, FIFTY-FIFTH (pages 206–207).

These exceptions relate to the direction given by the court to the jury as to the effect of the A. & F. being in the hands of trustees, if they should so find.

The defendants' counsel requested the court to instruct the jury substantially, that if they found from the evidence that the property of the A. & F. was in the exclusive possession and control of the trustees, and that they were operating and managing the road at the time of the accident, and that its trains were running over the A. & W. tracks, under an agreement with the receiver thereof, the verdict should be in favor of the A. & F. Company.

The court refused that prayer, and on the contrary instructed the jury (pp. 198–9) that the evidence failed to show any such possession of the road and operation of it by the trustees as to excuse it from liability, if the jury should find that it was guilty of negligence causing the accident. And the fifty-third, fifty-fourth, and fifty-fifth bills of exceptions, on pages 206–7, were taken to that ruling by the court.

It is submitted that the following authorities fully justify the direction of the court in that regard.

The York and Maryland Line Railroad Company *vs.* Winans, 17 How., 30.

Thomas *vs.* The R. R. Co., 101 U. S., 71.

Penn. Co. *vs.* St. Louis, &c., R. R. Co., 118 U. S., 290, 308.

Oregon R. R. Co. *vs.* Oregonian Railway Co., 130 U. S., 1, 23.

Naglee *vs.* A. & F. R. R. Co., 83 Va., 707 and authorities there cited.

Acker *vs.* A. & F. R. R. Co., 84 Va., 648.

2 Wood's Railway Law, Sec. 345.

In the case referred to above in the 17 Howard, the court said:

"Nor will the plea that the corporation has no independent nor responsible existence, as regards the Maryland Company, and that its display of a president and directors, of conductors, engineers and agents, of annual elections and annual statements, imports only a formal and illusive representation before the legislature of Pennsylvania, or their constituents, of a compliance with the conditions of the charter, avail the plaintiff. It is certainly true that the law will strip a corporation or individual of every disguise, and enforce a responsibility according to the very right, in spite of their artifices. And it is equally certain that, in favor of the right, it will hold them to maintain the truth of the representations to which the public has trusted, and estop them from using their simulation as a covering or defense."

That case has been repeatedly referred to and followed in subsequent cases in this court, and upon the exact point here in controversy in the cases above cited.

The two cases referred to in the Court of Appeals of Virginia are adjudications by that court that under the charter of the A. & F. (Special Act of the Virginia Legislature) road it had no power, by the deed of trust in question, to confer authority on the trustees to operate the road so as to avoid liability for their negligence.

This court will follow those decisions.
Powell vs. Brunswick 150 U.S. 433

Of course the trustees, had they been operating the road would also have been liable. But as the fact was that the Pennsylvania Railroad Company instead of the trustees, was operating the A. & F. road with its consent, it was sued instead of the trustees, and both are liable.

It may be added in this connection that the prayer found in bill of exceptions 36, page 189, is also erroneous, in assuming that there was evidence tending to show that the trains of the A. & F. were running over the tracks of A. & W., in pursuance of a contract made with the receiver. The only evidence upon that subject is from the receiver, Mr. Wilkins himself, who testified that he made no arrangement or agreement with the A. & F. or any other company for the use of the tracks of the A. & W., but when he was appointed receiver found one in existence, the exact terms of which he did not even know, and did not assume to interfere with it in any way (Record, p. 170–1).

Amongst other criticisms upon the prayer found in the thirty-seventh bill of exceptions, page 190, it may be suggested that it asks for a verdict in favor of the A. & F., if the jury shall find that the A. & F. exercised no authority or control over the line of railroad between St. Asaph's Junction and the south end of Long Bridge. Although the jury might have so found, it would not necessarily have followed that the verdict should have been for the A. & F. Company. There was other evidence strongly tending to show the liability of the A. & F. Company upon other grounds, to wit: It was their engine hauling the freight train, and the conductor of that train was their employee, as well as the brakeman; besides, the language of the prayer ignores all the mass of evidence in the case tending to show that the defendants were associated together in running the road from

Baltimore to Quantico as one line, and were liable as joint trespassers, regardless of what particular company might have been guilty of the negligence causing the injury.

There is not sufficient evidence tending to show that the A. & F. was being operated by trustees to justify the submission of that question to the jury, even if trustees had any authority to do so under the charter of that company and the deed of trust found in the record. The only evidence which it could be contended tended to show that that road was operated by trustees, consisted of the fact that the accounts of the road were kept in the names of trustees, and that one of the brakemen on the freight train was employed by Du Barry, one of the trustees, and the assertion in the report of the Pennsylvania Company, that it was operated by the trustees. The deed of trust does not authorize the trustees to take possession of the road except upon the written request of the bondholders. There is no evidence that such request was ever made, or that the trustees ever assumed possession or control of the road, or took any part whatever in the active operations thereof.

Attention is also called to the fact that the deed of trust does not confer upon the trustees power to operate the road but only to appoint a receiver or agent to conduct its affairs (p. 110).

If the corporation had lost control of the road, and it was actually being operated by trustees to the exclusion of the directors, in 1885, that is a fact which should, and naturally would have been stated in the company's report to the Board of Public Works of Virginia. On the contrary, the only construction to be placed upon the report is that the road was being operated by the company by its proper officers. The affidavit, signed by Roberts, as president, and Kenney, general superintend-

ent, says that Kenney was the "general snperintendent of operations." (pp. 161, 168.) If he was the general superintendent of the company, and the general superintendent of operations, it would seem that the operations were under the control of the company.

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## As to Interest.

The judgment in these cases were entered by the court below before the decision of this court in Railroad Company *vs.* Harmon's administrator (147 U. S., 571) that judgments in actions in tort do not carry interest in this District, and judgments were entered with interest. (See Record in Jones case, p. 216, and in Stewart case, pp. 26 and 27.) Since the decision in the Harmon case the defendants in error have filed remittiturs of the interest in the clerk's office of this court, and for the convenience of the court the same are printed and attached hereto.

WILLIAM A. COOK,
W. L. COLE,
*Attorneys for the Defendants in Error.*

Filed September 20, 1893.

## In the Supreme Court of the United States.

October Term, 1893.

The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Fredericksburg Railroad Company, and The Alexandria and Washington Railroad Company, *Plaintiffs in Error*,
*vs.*
Thomas W. Jones, *Defendant in Error.*
No. 260.

### Upon Writ of Error to the Supreme Court of the District of Columbia.

The judgment of the Supreme Court of the District of Columbia in this cause having been entered on the 23d day of June, 1890, in favor of Thomas W. Jones, the defendant in error, against the plaintiffs in error for the sum of ten thousand dollars, with interest thereon, from the date of the judgment of the Special Term, to wit, the first day of May, 1889, and costs, the said Thomas W. Jones, defendant in error, does hereby remit and release so much of said judgment as awards interest upon said recovery from the date of the judgment of the Special Term.

THOMAS W. JONES.

WILLIAM A. COOK,
W. L. COLE,
*Attorneys for Plaintiff below, Defendant in Error.*

Filed September 20, 1893.

## In the Supreme Court of the United States.

October Term, 1893.

The Pennsylvania Railroad Company, The Baltimore and Potomac Railroad Company, The Alexandria and Fredericksburg Railroad Company, and The Alexandria and Washington Railroad Company, *Plaintiffs in Error*,
*vs.*
Charles T. Stewart, *Defendant in Error.* } No. 261.

### Upon Writ of Error to the Supreme Court of the District of Columbia.

The judgment of the Supreme Court of the District of Columbia in this cause having been entered on the 23d day of June, 1890, in favor of Charles T. Stewart, the defendant in error, against the plaintiffs in error for the sum of fifteen thousand dollars, with interest thereon, from the date of the judgment of the Special Term, to wit, the first day of May, 1889, and costs, the said Charles T. Stewart, defendant in error, does hereby remit and release so much of said judgment as awards interest upon said recovery from the date of the judgment of the Special Term.

CHARLES T. STEWART.

WILLIAM A. COOK,
W. L. COLE,
*Attorneys for Plaintiff below, Defendant in Error.*